



**MID-MINNESOTA LEGAL AID
MINNEAPOLIS OFFICE
430 FIRST AVENUE NORTH #300
MINNEAPOLIS, MN 55401
Dorinda L. Wider ▪ (612) 746-3762 ▪ dlwider@mylegalaid.org**

September 13, 2016

BY U.S. MAIL and EMAIL hra@BloomingtonMN.gov

Mr. Mark Thorson, Chair
Bloomington HRA Board of Commissioners
1800 West Old Shakopee Road
Bloomington, MN 55431-3027

BY U.S. MAIL and EMAIL dgrout@BloomingtonMN.gov

Mr. Doug Grout, HRA Administrator
Bloomington HRA
1800 West Old Shakopee Road
Bloomington, MN 55431-3027

BY U.S. MAIL and EMAIL bhartman@BloomingtonMN.gov

Mr. Bryan Hartman, HRA Program Manager
Bloomington HRA
1800 West Old Shakopee Road
Bloomington, MN 55431-3027

**RE: Draft Bloomington HRA FY2017 Annual Plan and
Draft FY2016-2017 Bloomington HRA Administrative Plan Section 8 Rent
Assistance Housing Choice Voucher Program**

Dear Chairman Thorson, Mr. Grout and Mr. Hartman:

Mid-Minnesota Legal Aid of Minneapolis assists over 5,000 low-income residents of Hennepin County annually. Many of our clients apply to and participate in Bloomington HRA (BHRA) housing programs. The BHRA's housing programs are valuable resources in our community. We are writing to you on behalf of our clients about the BHRA's FY2017 Annual Plan (Annual Plan) and FY2016-2017 Administrative Plan for the Section 8 Housing Choice Voucher Program (Admin Plan).

We encourage the BHRA to make the following changes to its Plans and related policies and documents to enhance its current policies to better serve applicants, participants and owners; as well as to comply with applicable laws.

In some instances, we have noted policies that do not comply with applicable law. This letter provides notice to BHRA should the particular policy, practice or procedure remain uncorrected and an applicant or participant seeks our assistance with the resulting harm, we will not provide further notice to BHRA of the offending policy, practice or procedure. We will advise our client of her administrative or judicial remedies and assist her as appropriate since BHRA has had prior notice of the issue and opportunity to change course.

DRAFT FY2017 ANNUAL PLAN

P.1

In section A-1 the comment period contains a typo. It should read September 13, 2016.

BHRA Response: Date changed as noted.

P.3

In section B.3 the BHRA refers to its use of a language translation button on its website pages as a way to advance fair housing. This is an excellent tool. We hope that the BHRA shares its innovative use of this tool with other housing agencies so they are able to use this idea to increase access to their LEP community members.

Staff of the BHRA have shared this idea at meetings with other local and out-state housing authorities.

DRAFT FY2016-2017 ADMINISTRATIVE PLAN FOR THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

P.1

This page is mistakenly labeled as Appendix C.

“Part II. Applications/Waiting Lists” includes points at which the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

P.5

In Section C., the data on the chart of Section 8 Income Limits must be updated to the limits effective March 28, 2016. See <https://www.huduser.gov/portal/datasets/il/il16/Section8-IncomeLimits-FY16.pdf>.

The income limits table has been updated.

Revise section D., Bullet 2, to ensure that the alleged debt that is the subject of the repayment agreement with the BHRA or any PHA that has been allegedly breached is based on objective evidence before the repayment agreement is executed. The family must receive due process to dispute the amount allegedly owed and those procedures must be in the Admin Plan. The debt cannot be barred from collection by the applicable statute of limitations nor be a debt that cannot be collected because it was previously discharged in bankruptcy. *See* HUD-52675 regarding the alleged debtor's rights to challenge any alleged debt. These limitations and protections concerning an alleged debt to the BHRA or other housing program must be included in the Admin Plan and the BHRA's policies, practice and procedures. Failure to make these revisions to the Admin Plan will risk use of limited BHRA resources to defend legal challenges to those policy choices.

Revise section D., Bullet 3, to clarify that any debt to the BHRA or to another PHA upon which the BHRA will base the adverse action of denial of assistance is more than an alleged debt. The debt must be based on objective evidence. The debt must be the subject of a repayment agreement in which the family did not dispute the amount allegedly owed before the agreement was executed, or, be based on an enforceable court ordered judgment entered against the family. BHRA must not base its adverse action on any debt barred by the applicable statute of limitations. BHRA also must not base its adverse action on any debt discharged in bankruptcy. Denial of assistance without due process is a violation of statute and regulation. Failure to make these revisions will risk use of limited BHRA resources to defend legal challenges to those policy choices.

In the rare instances this occurs, the family is provided an opportunity dispute any proposed or breached repayment agreement. The BHRA provides families with a copy of HUD form 52675.

P.6

Revise section D., Bullet 4 regarding providing a Social Security Number (SSN) for a child under 6 years of age to include both the initial 90-day period and the second 90 days the BHRA is obligated to allow a person who has to produce a SSN for a child under 6 years of age. *See* "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs", 81 F.R. 12354 (March 8, 2016) and HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies", (April 7, 2016), p. 4. The BHRA's choice to adopt this policy without necessary revisions risks use of BHRA's resources to defend legal challenges to it.

Revised as suggested.

Revise section D., Bullet 5 to accurately reflect the "past 36 months" exclusion from admission is limited to terminations for drug-related criminal activity. *See* 24 C.F.R. § 982.553 (a) (2015). The correct definition of drug-related criminal activity is at 24 C.F.R. § 5.100 (2015). The BHRA's choice to adopt this policy without necessary revisions risks use of BHRA's resources to defend legal challenges to it.

Thank you for your comments.

Section D. does not appear to base denial of admission on arrests but it is unclear as drafted. Arrests are excluded pursuant to HUD PIH 2015-19 “Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions”, (November 2, 2015), and HUD Office of General Counsel Guidance on “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction”, April 4, 2016. This exclusion of arrest records should be stated more clearly. The BHRA’s choice to adopt this policy without necessary revisions risks use of BHRA’s resources to defend legal challenges to it.

Thank you for your comments.

Section D should contain a referral to Appendix K, the BHRA’s Reasonable Accommodation Policy, similar to the referral to Appendix G, the VAWA Policy, already included on P.6.

Updated as suggested.

P.8

In the first paragraph of section F. it sounds as though the only time an applicant can update their preference status while on the waiting list is at the time of the annual mailing to identify applicants to be dropped from the list when they fail to reply to the BHRA contact. However, the second sentence seems to indicate that an applicant can give notification of preference status at other times. Revise this paragraph for clarity so applicants do not forego providing an update of preference status when their situations change thinking they must wait for some annual update contact from the BHRA.

The paragraph is clear as written.

P.9

Paragraph 2 of section III.A. describes an applicant unable to receive assistance as one who is party to a binding lease agreement. The choice is the applicant's whether to attempt to execute a mutual lease rescission or to give notice ending the lease and suffering the financial consequences if the former landlord penalizes the applicant through retention of the security deposit or some other remedy chooses. The fact that an applicant is in a lease at the time that she comes to the top of the waiting list cannot be a reason to deny eligibility or keep her on the list until the end of her lease. A cost-benefit analysis might lead the applicant to either of the choices described *supra* because the benefits of a Section 8 Voucher are so significant. The choice cannot be directed by the BHRA. The BHRA's choice to adopt this policy risks use of the BHRA's resources to defend legal challenges to it.

The family is responsible for making this choice, not the BHRA.

In section B., the requirement for disclosure of Social Security Number (SSN) for a child under 6 years of age to include both the initial 90-day period and the second 90 days the BHRA is obligated to allow a person who has to produce a SSN for a child under 6 years of age. See "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs", 81 F.R. 12354 (March 8, 2016) and HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies", (April 7, 2016), p. 4. The BHRA's choice to adopt this policy without necessary revisions risks use of BHRA's resources to defend legal challenges to it.

This section has been updated.

P.10-11

We pointed out in our 2015 comment letter the following legally incorrect statement in paragraph 6 beginning on P.10: "Letters from consulting physicians or rehabilitation consultants will be acceptable verification of disability or handicap status." We pointed out the broader range of sources who are acceptable to verify an applicant's/participant's "disability or handicap status". A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide

verification of a disability. We suggested that the BHRA might find help in the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Modifications Under The Fair Housing Act”, March 2008. The BHRA response in 2015 was: “The BHRA follows HUD guidelines in the verification of disability status.” The BHRA may certainly intend to follow HUD guidelines but in its statement regarding verification of disability status in this section it has failed. The Admin Plan must be revised here to conform to the law. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This section has been updated to allow for other appropriate and knowledgeable sources.

P.13

In the first paragraph on this page there is a reference to the BHRA VAWA Policy in Appendix G. Revise this paragraph to also include a reference to the BHRA Reasonable Accommodation Policy in Appendix K.

The reference has been added.

The discussion of determination of unit size in section D. must be revised to include the possibility of a larger unit size for reasons related to a family member’s disability, or at least refer to the BHRA Reasonable Accommodation Policy in Appendix K for more information about a larger unit size as an accommodation. (provided that Appendix K contains that information, of course). The BHRA’s choice to adopt this policy without necessary revisions risks use of BHRA’s resources to defend legal challenges to it.

The reference has been added.

Revise section E. to include a description of the earned income disregard for families with disabilities pursuant to 24 C.F.R. § 5.617 and HUD Notice PIH 2016-05 “Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies”, (April 7, 2016), pp.12-14. The description should include enough detail that families with disabilities can ask the BHRA for additional information when their income changes to qualify them for the disregard and so they know that the rules have changed from a 48-month period of eligibility to a 24 straight months time period of eligibility. It is not sufficient to include only “Amounts disregarded under the Disallowance for Persons with Disabilities exclusion, effective February 20, 2001 under (24 C.F.R. § 5.617).” which currently appears in the Draft Admin Plan at Appendix B. P.3.

Thank you for your comments.

P.17

In paragraph 3 of section A., the BHRA refers to situations in which the “...unit and/or lease cannot be approved for any reason...”. When a lease is near, but not within the rent limits of the BHRA program, does the BHRA attempt to negotiate with the owner and the participant family to reach a rent level that is within the programs parameters? If this type of lease term adjustment takes place, how does the BHRA document these negotiations?

BHRA staff documents the participant of any lease negotiations or lease term adjustment.

P.18

The serious deficiencies presenting imminent danger to the family that are the subject of Bullet 1 on this page are not described with any degree of specificity. Although the BHRA may wish to keep its options open to define a condition in need of immediate attention with resolution within 24 hours as different situations arise, it would be helpful to owners and families alike to have some examples of what conditions rise to this level. In choosing what examples would be included in the non-exhaustive list here, we urge the BHRA to include the following:

- Where documentation verifies household member(s) physical well-being is endangered due to the presence of mold/mildew.
- Where documentation verifies household member(s) have blood lead levels at or above 5 micrograms/deciliter or the current blood lead reference level recommended by the Centers for Disease Control and Prevention.

The BHRA's goal is to preserve the occupancy of the family except when conditions present an imminent danger. Lead-based paint and mold testing cannot be completed within 24 hours. Housing Assistance Payments will be abated if repairs are not completed in a timely manner.

P.19

In the first bullet the BHRA outlines what steps it will take to recover its HAP funds if the owner fails to obtain and maintain a rental license from the City of Bloomington. The BHRA should include how it will assist a family in recoup its TTP paid to the owner when there was no rental license in place. The BHRA should inform the family that no rent is due until the license is in place. *See, Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sep. 4, 2007) (unpublished). If the BHRA will not or cannot reimburse the family for the TTP the owner improperly collected when unlicensed, then the BHRA should at the very least provide the family with the evidence the BHRA has to show the lack of license and advise the family to seek legal advice about recovering the TTP amounts the owner illegally collected. A referral to Legal Aid and to Home Line for this legal advice would be very useful for the family. The family should recover their money just as the BHRA intends to take the steps necessary to recover its funds.

The BHRA is not required to recover tenant-paid rent from the owner. We do refer tenants to HomeLine and other tenant legal services.

The list of items under “Sanitary Facilities” that may not be HQS violations with repair only recommended, not required, includes “Running toilet”. We urge the BHRA to elevate this to a condition for which repair will be required. It is the sign of more serious neglected plumbing maintenance and often involves increased expenses for the family paying for the water wasted if the condition is not repaired in a timely and workman-like manner.

This condition does not rise to a “fail” condition. BHRA makes comments about such non-HQS conditions on the HQS form given to the owner and tenant.

P.22

Item #2 and #7 are nearly synonymous and can be combined into one statement for brevity and clarity.

Changes made as suggested.

P.23

“Part V. Ongoing Occupancy” includes points at which the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

In the second paragraph of section A. the BHRA continues to use a “50% plus a day” standard to define a permanent household member to determine appropriate occupancy standards. The BHRA’s stated rationale for this is the need to avoid one person receiving Section 8 benefits in two separate households. When dealing with dependent children there is a better way than this “50% plus a day” standard to meet what the BHRA stated as its goal in 2015. It is not a standard used in current family law practice or family court documents in Minnesota surrounding joint custody, physical or legal. An agreement considered “joint physical custody” may show a child living with a custodial parent 45% of the time – less than the 50% standard that the BHRA wants to impose. The policy in this paragraph should state that the BHRA will determine whether or not the child resides in a household by reviewing the family court order to determine who the court orders the child lives with and follow that order. This reading and following court documents is what the BHRA is required to do in other situations, *see* 24 C.F.R. § 982.315 (c) (2015). The BHRA’s staff is capable of doing the same here. The BHRA’s choice to adopt this policy risks use of the BHRA’s resources to defend legal challenges to it.

Thank you for your comments.

P.24

The BHRA states in paragraph 5 of section A. that it will recertify approved reasonable accommodation requests at each annual reexamination after the initial approval. There is no legal basis for the BHRA imposing the burdensome request that a disabled participant make a new reasonable accommodation request each year. The BHRA could ask that the participant verify her or a family member’s continued disability status, if done with every family with a disability. The disability status of a family member is no legal basis for imposing the additional requirement that a new reasonable accommodation request be made and evaluated by the BHRA annually. The BHRA cannot require a reasonable accommodation request annually with the accompanying verifications and BHRA analysis. HUD Notice PIH 2014-25 “Over-Subsidization in the Housing Choice Voucher Program”, (October 16, 2014), p. 4, requires the BHRA to verify annually, during the unit’s annual inspection, that an additional bedroom is used for medical equipment. However, in the discussion of reasonable accommodation of live-in aides and approval of an additional

bedroom for the live-in aide providing disability-related overnight care, *Ibid.*, p.3, there is no requirement that the family submit a new reasonable accommodation request for the BHRA review and approval annually. The verification during the annual inspection of the use of the additional bedroom for medical equipment is the only annual verification that the BHRA is authorized to carry out. Failure to remove this overreaching language in this section of the Draft Admin Plan will risk use of limited the BHRA's resources to defend legal challenges to this policy choice.

This section has been revised to allow exceptions to annual re-verification.

P.25

Eligibility screening of a new family member is a BHRA responsibility. 24 C.F.R. §§ 982.201 and 5.903 (2015). However, the BHRA exceeds its authority in paragraph 5 when it proposes to limit the bedroom size of a voucher counting only some family members even though the new member has passed all program eligibility requirements with BHRA approval. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

Thank you for your comments.

P.26

The first paragraph on P.26 misstates the law and creates a type of participant without the legal authority to do so. The BHRA Draft Admin Plan states "The original family is defined..." without providing any legal support for its assertion in either the Draft Admin Plan or its response to our request that this be changed in 2015. Federal law recognizes only one subset of family members and assigns that subset particular obligations -- the head of household. 24 C.F.R. §§ 5.403 and 982.201 (c) (2015). The law does not otherwise distinguish between original family members, subsequent family members or recognize any subset of family members as "original family members" or "add-on members". Once the BHRA approves a new family member after eligibility screening, the BHRA holds the new member to the same tenant obligations as other family members and includes the new family member's income in rent calculations like other family members. The new family member who has passed the eligibility requirements has the same legal rights and obligations as any other family member. There are no subsets of family membership with lesser rights or obligation under the law. The BHRA does not have the legal authority to create such subsets with diminished rights. The BHRA must revise provisions in its Draft Plan that limit the rights of a new family member. The BHRA's choice to adopt this policy without necessary revisions risks use of BHRA's resources to defend legal challenges to it.

Thank you for your comments.

Revise the documentation of permanent absence discussed in the second paragraph on P.26 to include the possibility of removing a person from the household without the listed verifications if other good cause exists. There may be circumstances unanticipated and/or unforeseen by the remaining family that prevent them from providing the type of verification the BHRA seeks in this section. For example, a family member may abandon the family and disappear so there is no way to provide the verifications the BHRA policy requires. A good cause criterion would allow the BHRA to consider the family's individual circumstances that do not fit into the examples cited in

this section and determine that the missing person has permanently left the household and remove the person the family has requested be removed.

The policy allows for flexibility as written.

The second paragraph in section C. states the BHRA will review written requests for hardship exceptions to the \$50 minimum rent but contains no information at all about what hardship exceptions are provided to participants by law so they know what to put in a written request to the BHRA. The Draft Admin Plan repeatedly avoids citing the actual law throughout the text but in a situation like this, where a participant cannot effectively exercise his/her legal rights without at least the minimum legal information provided by the BHRA, this section must be revised to include some law. Revise this section to inform participants that the following may constitute a financial hardship that would exempt them from the \$50 minimum rent if their written request is approved by the BHRA: (i) lost eligibility for federal or state benefits, (ii) pending eligibility determination for federal or state benefits, (iii) inability to pay minimum rent will result in eviction, (iv) changed circumstances, including loss of employment, or (v) death in the family. 24 C.F.R. § 5.630 (b) (2015). This information is necessary to provide due process to participants. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

The BHRA's policies and procedures for minimum rent meet HUD requirements.

P.27

In paragraph one, section D., the BHRA encourages participants to resolve disputes with owners without BHRA assistance. In 2015 we suggested that this section include free mediation services contact information so participants and owners could use this free community resource to resolve disputes. We do not understand why the BHRA rejected this suggestion so we renew it here. We have referred tenants and landlords to this service and many have reported reaching agreements that allowed them to continue the business relationship that their tenancy requires for the duration of their lease, and the service is free to both sides. Please reconsider providing the following information in this section of the Draft Admin Plan:

Conflict Resolution Center
2101 Hennepin Avenue, Suite 100
Minneapolis, MN 55405
612-822-9883
mediation@crcminnesota.org • www.crcminnesota.org

The contact information has been added to the plan.

The "Absence from Unit" policies of section E. are still illegal. Failure to revise the Draft Admin Plan in this section places BHRA resources at risk to defend legal challenges to this position. The BHRA conflates the family's obligation to report when "a family member no longer resides in the unit.", 24 C.F.R. § 982.551 (h) (3) (2015), with the BHRA's desire to control the circumstances under which a family member is temporarily away from home, but continues to live in the home. The temporary absence from home of an individual family member is not the legal equivalent of the absence of the entire family from the unit described in 24 C.F.R. § 982.312 (2015). The family absence covered

by 24 C.F.R. § 982.312 (2015) is defined as absence when no member of the family is residing in the unit, not the absence (temporary or permanent) of an individual family member. 24 C.F.R. § 982.312 (c) (2015). Although the family is required by law to inform the BHRA of who lives in the home and who no longer lives in the home, 24 C.F.R. §§ 982.551 (b) and (h)(3) (2015), the family is not required by law to seek pre-approval from the BHRA for any individual family member's absence. The family is not legally required to provide verification to the BHRA of the need for an individual family member's absence for the BHRA's assessment.

The BHRA is required to state in its Administrative Plan its time limit on absence of the entire family from the home, which according to regulation cannot exceed 180 days. 24 C.F.R. § 982.312 (e) (2015). The proposed language in the BHRA Draft Plan fails to satisfy this requirement because it does not address the absence of the entire family but erroneously focuses on the absence of individuals. The BHRA's choice to adopt this policy risks use of the BHRA's resources to defend legal challenges to it.

Thank you for your comments.

P.28

Revise paragraph 3 in section H to ensure that the BHRA's policy of denying moves for alleged debts excludes any alleged debt to the enumerated housing programs that are unenforceable because it is barred by the statute of limitations or has been discharged in bankruptcy. Also include in this paragraph information to the alleged debtor of her rights to challenge any alleged debt as provided in HUD-52675. Failure to make these changes risks use of BHRA's resources to defend legal challenges to it.

The BHRA follows HUD guidelines regarding amounts owed.

P.29

Bullet 1 in section K. requires verifiable information to move forward with an allegation of fraud or abuse of the program. If a referral, complaint or tip does not produce a verifiable information is the referral, complain or tip removed from the participant's file? It should not remain part of the participant file if nothing is verifiable and there are no negative results from the BHRA investigation. It is unclear in Bullet 1 or Paragraph #1 that this will happen.

Thank you for your comments.

In the BHRA 2015 Responses to our comments the "optional Release of Information form" referred to in section K.1. was provided to us. A copy of what we received is attached. This Release of Information does not satisfy the requirements of informed consent under the provisions of the MN Government Data Practices Act and its implementing Rules. Minn. Stat. § 13.05, subd.4 (2015); Minn. R. 1205.1400 Subp. 3 and 4 (2013). This form must be revised to conform to the law in order avoid the risk of use of the BHRA's resources to defend legal challenges to it.

This form is presently under review and revision by the BHRA.

P.31

“Part VI. Terminations” includes points at which the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

In bullet 1 of section c) the BHRA policy relies on the participant’s knowledge through “Things You Should Know” as a way to establish the participant’s knowledge that an action taken was wrong thus showing intentional misrepresentation. We looked at the BHRA website and were unable to locate a copy of the “Things You Should Know” document referenced in the policy. We did locate a HUD form, HUD-1140-OIG by this title, most recently dated November 2004, but are not sure that this is what you are referring to in this section of the Draft Admin Plan since the BHRA Plan says the documents in the section are signed by the participant and the HUD-1140-OIG we located has no signature block. Please provide the “Things You Should Know” that the BHRA would rely on to establish intentional misrepresentation pursuant to this section of the Draft Admin Plan.

This section has been revised and reference to “Things You Should Know” has been removed.

Paragraph 3 in section c) describes the letter from BHRA that the participant will receive after the BHRA completes its investigation. The Draft Admin Plan states in paragraph 3 that the participant will have 10 days “to furnish any mitigating evidence.” In preceding paragraph 2 in section c) the BHRA states that the termination letter will include Informal Hearing procedures and inform the participant that she has 10 days to request an Informal Hearing. Do these two 10 day periods run concurrently? These two paragraph must be revised to make it clear how these two periods relate to one another so the timeline is clear to the participant facing termination for fraud or misrepresentation under this section of the Draft Admin Plan.

These are two different actions and do not coincide.

P.32

Revise Bullet 4 in section B. to ensure that the BHRA’s policy denying or terminating assistance to a participant for alleged debts excludes any alleged debt to the enumerated housing programs that is unenforceable because it is barred by the statute of limitations or has been discharged in bankruptcy. Also include in this paragraph information to the alleged debtor of her rights to challenge any alleged debt as provided in HUD-52675. Failure to make these changes risks use of BHRA’s resources to defend legal challenges to it.

The BHRA follows HUD guidelines regarding amounts owed.

Revise Bullet 5 in section B. to ensure that the BHRA's policy denying or terminating assistance to a participant for alleged debts excludes any alleged debt to the enumerated housing programs that is unenforceable because it is barred by the statute of limitations or has been discharged in bankruptcy. Also include in this paragraph information to the alleged debtor of her rights to challenge any alleged debt as provided in HUD-52675. Failure to make these changes risks use of BHRA's resources to defend legal challenges to it.

The BHRA follows HUD guidelines regarding amounts owed.

P.34

The first paragraph in section B. refers to an HRA determination that a participant owes a debt to the BHRA as a result of a termination action. The BHRA is required pursuant to HUD-52675 to have a policy for resolving challenges to alleged debts. We are unable to locate any process like this in the Draft Admin Plan. This section seems like a logical place for this policy or a reference to it if it is in some other part of the Draft Admin Plan. The BHRA's choice to adopt this policy without necessary revisions risks use of BHRA's resources to defend legal challenges to it.

The BHRA follows HUD guidelines regarding amounts owed.

The first paragraph in section B. refers to BHRA collection of an alleged debt through the Minnesota Revenue Recapture Act. Since this is significant adverse action against a participant the citation, Minn. Stat. § 270A.01-.12 (2015), should be used so an affected family can find more information.

Thank you for your comments.

The Revenue Recapture Act, Minn. Stat. § 270A.09 (2015), requires that the BHRA have a hearing process for an alleged debtor against whom the BHRA uses the Revenue Recapture process may challenge the debt. The hearing be conducted according to the contested case procedures of the MN Administrative Procedures Act (APA), Minn. Stat. §§ 14.57-14.62 (2015). We are unable to locate any hearing procedures in the Draft Admin Plan that include the APA requirements that the Revenue Recapture Act requires. These hearing procedures must be included here or a reference added to its location in the Draft Admin Plan. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

The Minnesota Revenue Recapture Act, at Minn. Stat. § 270A.08 provides that if a public agency administers a low-income housing program, and has provided a debtor with the opportunity to contest the issues regarding the validity of the claim at a hearing conducted pursuant to HUD regulations, no further hearing is required. Therefore, Minn. Stat. § 270A.09 does not apply.

P.36

Paragraph 1 on P.36 describes the Voucher Payment Standard. The BHRA may now approve a payment standard of not more than 120% of the FMR as a reasonable accommodation for a family that includes a person with a disability without HUD approval. *See*, HUD Notice PIH 2016-05 “Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies”, (April 7, 2016), p.31. Revise this section to include this opportunity as a reasonable accommodation for participants with a disability. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

120% approvals are addressed in section XIII of Appendix K – Reasonable Accommodations, which has been updated.

App.A.

P.1

Paragraph A.3. limits information to the community, which would include potential participant families, to electronic information on the BHRA website. Not all people, and certainly not all low-income people, have internet access. The BHRA must make printed materials available, as well as electronic communications, in order to effectively communicate with the community. The BHRA includes print materials for owners at C.4. on P.3; and should do the same here to avoid the appearance of bias.

The BHRA provides this in written form upon request.

P.2

Paragraph B.2.c. limits information to the families to electronic information on the BHRA website. Not all potentially eligible low-income families people have internet access. The BHRA must make printed materials, as well as electronic communications, available in order to effectively communicate with potential families. The BHRA includes print materials for owners at C.4. on P.3; and should do the same here to avoid the appearance of bias.

The BHRA provides this in written form upon request.

Add the “Access Press” to paragraph B.2.d.

The reference has been added.

P.3

Add “Access Press” to paragraph C.2. to recruit additional owners who either are disabled or are interested in providing housing serving the community of people with disabilities.

The reference has been added.

P.4

Subparagraph 1.a. refers to a “Finders-Keepers” policy. There is nothing in the Draft Admin Plan about a “Finders-Keepers” policy when we did a word search for the term. Revise the Draft Admin Plan to add this information or delete this subparagraph.

This reference has been removed.

Subparagraph 1.b. includes a 30% assistance priority for very low-income families and subparagraph 1.g. includes a 75% of assistance priority for extremely low-income families. A total of 105% would seem to create an impossibility so something must be changed or additional explanation added for clarification.

This section has been revised to reflect HUD's current income targeting requirements.

The definition of extremely low-income in subparagraph 1.g. is incorrect. See 24 C.F.R. § 5.603 (2015) and HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies", (April 7, 2016), p.5., for the correct definition.

This section has been corrected.

P.5

Revise 2.a. to include in the list the step(s) the BHRA takes to meet its obligations under 24 C.F.R. § 982.301 (2015) to advise families about the advantages of areas that do not have a high concentration of low-income families. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This section has been updated to include this information.

Subparagraph 2.a.(6) refers to "operation of the shopping incentive credit." There is nothing in the Draft Admin Plan about "operation of the shopping incentive credit" when we did a word search for the term. Revise the Draft Admin Plan to add this information or delete this subparagraph.

This reference has been removed.

App.B.

P.2

Renumber the items listed as included in income so "State school grants in excess of school..." is 7).

This change has been made.

In what is currently item 7), and should be 8) when the renumbering noted *supra* is complete, replace "alimony" with "spousal maintenance", the contemporary legal term in use.

This change has been made.

P.3

It is not sufficient to state at B.13) only “Amounts disregarded under the Disallowance for Persons with Disabilities exclusion, effective February 20, 2001 under (24 C.F.R. § 5.617)(sic).” The item is meaningless to the ordinary reader. It could be revised by including a description of the earned income disregard for families with disabilities pursuant to 24 C.F.R. § 5.617 (2015) and HUD Notice PIH 2016-05 “Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies”, (April 7, 2016), pp.12-14. The description must include enough detail that families with disabilities can ask the BHRA for additional information when their income changes to qualify them for the disregard and so they know that the rules have changed from a 48-month period of eligibility to a 24 straight months time period of eligibility. Or, if the BHRA prefers, this section of the Appendix could be revised through a reference to III.E. on p.13 if the revisions described in our comments *supra* on that section are made.

Thank you for your comments.

App.C.

In “Appendix C. Selection Preferences” when reviewing preferences linked to disability the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

P.1

Does the preference in subparagraph 2. for a witness to a crime who has gone through the required threat assessment and recommendation process include a crime victim who possess the same qualifying criteria? If not, what is the BHRA rationale for excluding crime victims in under those circumstances?

This preference has been removed.

It appears there is a typo in line 2 of the “Continuously Assisted” section. Should “with one year)” be “within one year)”?

This change has been included.

App.D.

In “Appendix D. Subsidy Standards” when reviewing families with reasonable accommodations related to unit size the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

P.1

Revise the second paragraph on P.1 to include the option of approval of an additional bedroom as a reasonable accommodation for the use by a live-in aide. See HUD Notice PIH 2014-25 “Over-Subsidization in the Housing Choice Voucher Program”, (October 16, 2014), p.3-4. The BHRA’s choice to adopt this policy without necessary revisions risks use of BHRA’s resources to defend legal challenges to it.

Live-in aide requests are covered in section V, part G as well as in the reasonable accommodation policy located in Appendix K.

App.E.

In “Appendix E. Section 8 Housing Choice Voucher Program Informal Review and Hearing Procedure” the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

Revise the Appendix to include the hearing rights mandated by 24 C.F.R. §§ 5.903 (f) and 982.553 (d) (2015). There is nothing in this section about the BHRA hearing process for a family who will be denied admission or have their assistance terminated based on the criminal record obtained by the BHRA. The BHRA must provide the family with a copy of the record on which it is basing its adverse action and provide the family an opportunity for an informal hearing to dispute the accuracy and relevance of the criminal record. The BHRA policy and Admin Plan must provide the Informal Hearing in this situation before the BHRA denies admission or terminates assistance based on the criminal record. 24 C.F.R. § 5.903 (f) (2015). Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

The family is provided the record and the opportunity to dispute it. A hearing is not required by HUD regulations to dispute criminal records. A hearing is always offered in cases of denial of admission or termination of assistance.

App.G.

In “Appendix G. Violence Against Women (VAWA) Policy” the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

P.7

Please provide us with copies of the Notices regarding VAWA given to applicants, to tenants/participants and to owners that are the subject of section XII.

The BHRA includes notices such the following: “If you or any family member is a victim of domestic or sexual violence, you may have certain rights and protections under the Violence Against Women Act (VAWA). If such a victim is present in the household, submit a request to the HRA to access these rights. Such a statement must be received within 14 days of the date of this letter.”

App.H.

P.1

When were the last two assessments and updates done by the BHRA that are the subject of section II.?

The BHRA is undertaking a revision of its LEP Policy.

P.2

In paragraph 3 of section 3 the BHRA states that it will “periodically assess client needs for language assistance based on requests for interpreters and/or translation, as well as the literacy skills of clients.” Is the BHRA policy discussion periodic assessments of its LEP participants class as a whole or is it discussing periodic assessments of individual LEP participants? In either case, please tell us the following: (i) who on the BHRA staff does these assessments; (ii) what skills and training the BHRA staff persons doing these assessments have in LEP; and (iii) what materials the BHRA uses to make these assessments.

What steps does the BHRA take to ensure it is providing meaningful access to LEP applicants, participants and community members when it has determined pursuant to paragraph one of section 4 that a document will not be translated?

The BHRA is undertaking a revision of its LEP Policy.

P.3

In section 5, bullet 2, how does the BHRA prevent conflicts of interest issues when using interpreters from what are often small LEP communities within the Metro area? If the interpreter and LEP applicant, participant or community member are acquainted does the BHRA have a recusal process or method to disclose and waive the conflict of interest?

The BHRA is undertaking a revision of its LEP Policy.

App.I.

In “Appendix I. Project-Based Voucher Assistance Guidelines” the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This section should include a

section that covers the BHRA's obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

P.5

Paragraph 1 of the "Income Targeting" section is incorrect. See 24 C.F.R. § 5.603 (2015) and HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies", (April 7, 2016), p.5., for the correct definition. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This paragraph is correct as written. Per HUD regulations, in order to minimize displacement, in-place families of new units placed under project-based contract are not subject to income targeting requirements.

P.6

In paragraph one of the "Briefing of Families" section the BHRA provides the participant family with the HUD-prescribed lead-based paint brochure. This information is as important to the health of participants in the Housing Choice Voucher Program as it is to the participants in the Project-Based Voucher Program. Revise the briefing section of the Draft Admin Plan for the Housing Choice Voucher Program, at III.C., to ensure that Housing Choice Voucher participants receive this brochure.

Reference to the lead-paint brochure has been added to page 11.

According to Bullet 3 of the "Briefing" section the BHRA plans to provide a tenant-based Voucher to a family moving after 12 months in the Project-Based Voucher program, if the BHRA has a Voucher available at the time of the family's move. How many Vouchers have been provided in these circumstances in each of the last 2 years? How many moving families have been denied a Voucher in each of the last 2 years because a Voucher was not available at the time of the family's move?

The BHRA currently has 31 units under project-based contract. The BHRA has not denied a moving project-based participant a tenant-based voucher in 2015 or 2016.

P.9

Revise the "Limits on Initial Rent to Owner" to include the fact that the BHRA may now approve a payment standard of not more than 120% of the FMR as a reasonable accommodation for a family that includes a person with a disability without HUD approval. See, HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies", (April 7, 2016), p.31. The BHRA's choice to adopt this policy without necessary revisions risks use of BHRA's resources to defend legal challenges to it.

Mr. Thorson, Mr. Grout and Mr. Hartman

September 13, 2016

Page 20

The 120% approval is not applicable to the project-based program, as a payment standard is not used in the calculation of tenant rent. The rent calculation for project-based units ensures that tenants never pay more than 30% of their adjusted income toward rent and utilities.

App. J.

P.1

Please revise our name to “Mid-Minnesota Legal Aid – Minneapolis”; the other information remains the same.

Revised as noted.

App. K.

In “Appendix K. Reasonable Accommodation Policy” the BHRA will obtain chemical health records. The BHRA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. B. This section should include a section that covers the BHRA’s obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

The BHRA does not request or obtain chemical health records.

P.1

Add to the third paragraph of section II. the citation for the ADA Amendments Act (ADAAA), Pub. L. No. 110-325, § 2(b)(1), 122 Stat. 3553 (2008) (codified at 42 U.S.C. § 12101 *et seq.*) which significantly amended the ADA already cited in this paragraph.

This citation has been added to the section.

P.2

Revise section G. to include in the definition of reasonable accommodation “physical modifications” which may also be the subject of reasonable accommodation requests just as the exceptions to the BHRA’s rules, policies or procedures that the BHRA Draft Admin Plan already includes in this section. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

Updated to include physical modifications to BHRA-owned units.

P.3

Revise the third paragraph of section G. The correct standard is “undue financial and administrative burden” not “undue financial or administrative hardship” incorrectly used in the BHRA Draft Admin Plan. *See* the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Accommodations Under The Fair Housing Act”, May 2004, and the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Modifications Under The Fair Housing Act”, March 2008. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This change has been made as noted.

Revise the definition of direct threat in section H. removing: “the person’s own health or safety”. This is not a part of the legal criterion of direct threat. *See* 42 U.S.C. § 3604 (f) (9) (2015). The BHRA’s choice to adopt this policy risks use of the BHRA’s resources to defend legal challenges to it.

This section has been updated as noted.

Delete section I “Undue Hardship”. It is not the legal standard for evaluating a reasonable accommodation request.

This section has been deleted.

Revise the third paragraph of section IV. The correct standard is “undue financial and administrative burden” (emphasis added) not “undue financial *or* administrative burden” (emphasis added) as incorrectly used in the BHRA Draft Admin Plan. *See* the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Accommodations Under The Fair Housing Act”, May 2004, and the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Modifications Under The Fair Housing Act”, March 2008. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This section has been updated as noted.

P.4

Revise section V. to include a timeline in the process for the BHRA to respond to a reasonable accommodation request. Each request turns on individual facts but the person making the request should have some idea of how long the BHRA will take to make its determination or respond seeking more information.

Thank you for your comments.

Revise section XII. The correct standard is “undue financial and administrative burden” (emphasis added) not “undue financial *or* administrative burden” (emphasis added) as incorrectly used in the BHRA Draft Admin Plan. *See* the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Accommodations Under The Fair Housing Act”, May 2004, and the “Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Modifications Under The Fair Housing Act”, March 2008. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This change has been updated as noted.

In the third paragraph of section XIII., the BHRA describes a BHRA “informational sheet on how to request a reasonable accommodation” it distributes at the listed events. Please provide us with a copy of this information sheet. This information should include how to make a reasonable

accommodation request to the participant's landlord as well as the BHRA. The owner is obligated to make reasonable accommodations by law and the terms of the HAP Contract HUD-52641.

The informational sheet is attached. Tenants reasonable accommodation requests of their landlord are made directly to the landlord.

Revise the fourth paragraph of section XIII. to reflect the fact that the BHRA may make the exception up to 120% without seeking HUD approval. *See*, HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies", (April 7, 2016), p.31. The BHRA's choice to adopt this policy risks use of the BHRA's resources to defend legal challenges to it.

This section has been updated as noted.

Revise the first sentence of section XIV. to include physical modifications as a form of reasonable accommodations along with the exception to BHRA's rules, policies and procedures. *See* the "Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Modifications Under The Fair Housing Act", March 2008. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

Updated to include physical modifications to BHRA-owned units.

Revise the last sentence of paragraph one of section XIV. The correct standard is "undue financial and administrative burden" (emphasis added) not "undue financial *or* administrative hardship" (emphasis added) as incorrectly used in the BHRA Draft Admin Plan. *See* the "Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Accommodations Under The Fair Housing Act", May 2004, and the "Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Reasonable Modifications Under The Fair Housing Act", March 2008. Failure to revise the Draft places BHRA resources at risk to defend legal challenges to this position.

This section has been updated as noted.

We hope that these comments will be used to revise the Bloomington HRA FY 2017 Annual Plan and the Draft FY2016-2017 Administrative Plan Section 8 Rent Assistance Housing Choice Voucher Program before it is approved by the Bloomington HRA Board. If you have any questions regarding the points we have raised, please contact us.

Sincerely,

/s/

Dorinda L. Wider
Attorney at Law

DLW:nh

Enc.

cc: Erika Grant, HUD FHEO

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Below is the BHRA's Request for A Reasonable Accommodation form, the text of which is place on the BHRA's letterhead.

REQUEST FOR A REASONABLE ACCOMMODATION

<u>This is important housing information.</u> <u>If you do not understand it, have someone translate it for you now.</u>
<u>Información importante acerca de las viviendas.</u> <u>Si usted no lo comprende, pida a alguien que le traduzca ahora.</u>
<u>Qhov no yog lus tseem ceeb heev qhia txog tsev nyob.</u> <u>Yog tias koj tsis tau taub thov hais rau lwm tus pab txhais rau koj.</u>
<u>Это важная информация о жилищади.</u> <u>Если Вы её не понимаете, попросите кого-нибудь сейчас перевести её Вам.</u>
<u>Kani waa warbixin muhiim ah ee ku saabsan guriyaha.</u> <u>Haddii aadan fahamsaneyn waa in aad heshaa hadeertaan qof kuu tarjumaa</u>

Dear Client,

If you, or a member of your family, have a disability you may request a reasonable accommodation at the application process or after admission. If you would prefer not to discuss your disability with the HRA, that is your right.

If you need:

- A change in our policies or procedures
- A change in the way we communicate with you
- Other accommodation

Because of a disability, you may ask for this change, which is called a "reasonable accommodation." If your request is reasonable, we will try to make the changes you need.

We will typically make a decision within thirty (30) days. We will let you know if we need more information or verification from you or if we would like to discuss other ways of meeting your needs.

If we turn down your request, we will explain our decision, and you may give us additional information.

Mr. Thorson, Mr. Grout and Mr. Hartman

September 13, 2016

Page 25

If you need help in using the form on the back of this sheet, or if you want to give us your request in another way, we will help you.

Thank you,
Bloomington HRA

REQUEST FOR A REASONABLE ACCOMMODATION

The following member of my Household has a disability:

Due to this disability, please provide this reasonable accommodation:

I need this reasonable accommodation because:

Name: _____

Signature: _____

Date: _____

Address: _____

Telephone: _____

Mr. Thorson, Mr. Grout and Mr. Hartman

September 13, 2016

Page 26

Complete this form & return to:

Bloomington HRA

1800 West Old Shakopee Road

Bloomington, MN 55431

hra@bloomingtonmn.gov

Phone: 952-563-8937 Fax: 952-563-4977